

REMARKS

With the cancellation herein without prejudice of claim 17, and the addition of new claims 33 to 35, claims 18 to 35 are pending in the present application. Pending claim 31 has been withdrawn from consideration (but should be rejoined as explained more fully below). It is respectfully submitted that all of the presently pending claims are allowable, and reconsideration of the present application is respectfully requested.

Applicants thank the Examiner for considering the previously filed Information Disclosure Statement, PTO-1449 paper, and cited references.

Applicants thank the Examiner for indicating that claims 18 to 28 and 30 include allowable subject matter. In this regard, the Examiner will note that claim 18 (from which claims 19 to 28 and 30 ultimately depend) has been rewritten herein in independent form and to include the subject matter of its base claim. The Examiner will further note that each of claims 29 and 32 has been amended herein without prejudice to depend from claim 18. Accordingly, all of claims 18 to 30 and 32 are in condition for immediate allowance.

The remaining rejected claim has been canceled, thereby rendering moot the remaining claim rejection.

Withdrawn claim 31, as herein amended without prejudice, relates to a method including steps that yield the optical sensor assemblage of claim 18, which has been indicated to be allowable. Therefore, claim 31 is allowable for at least the same reasons as claim 18.

As stated in 1184 O.G. 86, entitled "Guidance on Treatment of Product and Process Claims in light of In re Ochiai, In re Brouwer and 35 U.S.C. § 103(b)":

The purpose of this Notice is to provide guidance to Patent and Trademark Office personnel . . . on . . . how process claims directed to making or using nonobvious products are to be treated.

. . .

[W]here product and process claims are presented in the same application, applicant may be called upon under 35 U.S.C. 121 to elect claims to either the product or process. The claims to the non-elected invention will be withdrawn from further consideration. However, in the case of an elected product claim, rejoinder will be permitted when a product claim is found allowable and the withdrawn process claim depends from or otherwise includes all the limitations of an allowed product claim. . . . In the event of rejoinder, the rejoined process claims will be fully examined for patentability in accordance with 37 CFR 1.104 - 1.106. If the application containing the rejoined claims is not in condition for allowance, the subsequent Office action may be made final . . .

Indeed, if a product is non-obvious, then a process, whose performance results in the non-obvious product, is also non-obvious. Rejoinder and allowance of claim 31 is therefore respectfully requested.

New claims 33 to 35 have been added. Claims 33 to 35 do not add new matter and are supported by the present application, including specification, as originally filed. Claim 33 depends from claim 18 and is therefore allowable for at least the same reasons as claim 18. Claims 34 and 35 depend from claim 31 and are therefore allowable for at least the same reasons as claim 31.

Accordingly, all of pending claims 18 to 35 are in condition for immediate allowance.

Applicants reserve the right to pursue the subject matter of the claims as originally and/or previously presented in a continuation and/or divisional patent application. Further, any disclaimer that may have occurred during the prosecution of this application is expressly rescinded as regards any subsequently filed patent application.

Conclusion

In view of the foregoing, it is respectfully submitted that all of the pending claims are allowable. It is therefore respectfully requested that the rejections be withdrawn. Prompt reconsideration and allowance of the present application are therefore respectfully requested.

Respectfully submitted,

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/Aaron Grunberger/
By: Aaron Grunberger, Reg. No. 59,210 for:
Gerard A. Messina, Reg. No. 35,952

KENYON & KENYON LLP
One Broadway
New York, New York 10004
(212) 425-7200

CUSTOMER NO. 26646